

REMARKS

Applicants have amended claim 9 and added new claims 14 to 18.

Applicants have canceled non-elected claims 2-6 and 8 without prejudice or disclaimer of the subject matter recited therein, and applicants reserve all rights to such subject matter. Upon entry of this amendment, claims 9 and 14-18 will be under examination.

Support for the amended claims can be found in the specification as follows: page 1, paragraph 1 for reperfusion injury prevention; page 7, lines 26-31 and page 12, line 44 to page 13, line 10 for peptidic membrane binding elements; page 7, line 21-22, page 12, lines 19-40, page 20, lines 11-12 and the bottom of SEQ ID NO: 1 for non-peptidic membrane binding elements and myristoyl; and page 10, line 34 to page 11, line 35 for types and constituents of flush storage solutions

The office action is discussed below.

The claimed invention is not anticipated by the prior art

On pages 2-3 of the office action, the examiner rejected the claims as anticipated by both Mossakowska *et al.*, WO 98/39433 and Smith *et al.*, WO 98/02454. Applicants respectfully traverse these rejections.

Applicants note that in order to reject a claim under 35 USC § 102, the examiner must demonstrate that each and every claim term is contained in a single prior art reference. See *Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 USPQ2d 1001, 1010 (Fed. Cir. 1991); *Hybritech, Inc. v. Monoclonal Antibodies, Inc.*, 231 USPQ 81, 90 (Fed. Cir. 1986); see also MPEP § 2131 (Rev. 1, February 2003). Claim terms are to be given their plain meaning as understood by the person of ordinary skill in the art, particularly given the limitations of the English language. See MPEP §§ 707.07(g); 2111.01 (Rev. 1, February 2003). Claims are to be given their broadest reasonable interpretation consistent with applicants' specification. See *In re Zletz*, 13 USPQ2d 1320, 1322 (Fed Cir. 1989) (holding that claims must be interpreted as broadly as their terms reasonably allow); MPEP § 2111 (Rev. 1, February 2003).

Not only must the claim terms, as reasonably interpreted, be present, an allegedly anticipatory reference must enable the person of ordinary skill to practice the invention as claimed. Otherwise, the invention cannot be said to have been already within the public's possession, which is required for anticipation. See *Akzo, N.V. v. U.S.I.T.C.*, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986); *In re Brown*, 141 USPQ 245, 249 (CCPA 1964). Applicants review below the references with these concepts in mind.

The Mossakowska and Smith PCT publications are referred to in the captioned application at page 12, lines 11-15 as sources of teachings of soluble


derivatives of soluble peptides that can be used according to the invention. The present claims, however, are not solely directed to such derivatives, but rather inventive methods of use for soluble derivatives. Such claims are specifically permitted under 35 USC §§ 100(b), 101.

In the present situation, the references do not teach or suggest methods for preparing an organ by perfusion prior to transplantation or storage of the organ by providing an ischemic reperfusion injury prevention preparation for perfusion of an organ prior to transplantation or storage of the organ. Because the references do not concern such a method, the references cannot anticipate the claims. Therefore, applicants request withdrawal of the rejections.

Request

Applicants submit that the claims are in condition for allowance, and respectfully request favorable consideration to that effect. The examiner is invited to contact the undersigned at (202) 912-2000 should there be any questions.

Respectfully submitted,



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June 9, 2004
Date

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